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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

GUST YIATCHOS, *Petitioner*,

vs.

PEARLE W. YIATCHOS, etc., et al.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE PETITIONER

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IN THE SUPREME COURT
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No. 659

GUST YIATCHOS, *Petitioner*,

vs.

PEARLE W. YIATCHOS, etc., et al.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

OPINIONS BELOW

The opinion of the Supreme Court of the State of Washington is reported at 60 Wn 2d 179, 373 P 2d 125. It is set forth at page 17 of the Record.

The memorandum opinion of the trial court is not contained in any published reports. It is set forth at page 7 of the Record.

JURISDICTION

The judgment of the Supreme Court of the State of Washington was entered on June 28, 1962 (R. 17). A timely petition for rehearing filed by petitioner was denied by that Court on September 19, 1962 (R. 21). On December 12, 1962, a petition for a Writ of Certiorari was filed in this Court to review this decision. This Court granted the Writ on February 18, 1963, and

placed the case on the summary calendar (R. 23). The jurisdiction of this Court is invoked under 28 USC § 1257 (3).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

This case involves Article 1, § 8, Clause 2 of the United States Constitution which provides:

> "The congress shall have the power. . . .
>
> "To borrow money on the credit of the United States;".

Also involved is the Supremacy Clause, Article 6, Clause 2 of the Constitution which provides:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

Also involved is the statute authorizing the Secretary of the Treasury to issue United States Savings Bonds and to prescribe the terms and conditions therefor. The statute, 31 USC § 757c (a), and the pertinent Treasury Regulations, 31 C.F.R. § 315.0, et seq., are set forth in the Appendix hereto (pp. 17).

QUESTIONS PRESENTED

Upon the death of the named owner of United States Savings Bonds purchased by a husband with community property, is the beneficial ownership of such bonds governed by United States Treasury Regulations or by state community property law?

Does the mere purchase by a spouse with community funds of United States Savings Bonds, designating a stranger to the community as beneficiary, give rise to relief to the surviving spouse upon the death of the purchaser, in the absence of evidence of actual fraud or evidence of the improper disposition of such a disproportionate share of the community property as to be tantamount to fraud?

If the designation of a stranger to the community as beneficiary upon United States Savings Bonds is held under state community property law to work a constructive fraud upon the surviving spouse when the named owner spouse dies, is the beneficiary designation on the bonds void in its entirety, or is the remedy limited to preserving to the surviving spouse her one-half interest in the bonds by the imposition of a constructive trust, giving full force and effect to the beneficiary designation as to the remaining one-half interest which is untainted by fraud?

STATEMENT OF THE CASE

This case was heard in the trial court upon stipulated facts and was presented on appeal to the Supreme Court of the State of Washington upon an Agreed Statement of Facts (R. 1). There are no disputed questions of fact.

The deceased, Angel N. Yiatchos, during his marriage to Pearle W. Yiatchos, purchased the United States Savings Bonds here involved with community property. On each bond Angel N. Yiatchos was registered as owner, and petitioner, Gust Yiatchos, his brother, was registered as P.O.D. (payable on death) beneficiary. Angel N. Yiatchos died and this action to determine the ownership of the bonds was brought in the course of the probate of his will.

The decedent's will bequeathed all cash and bonds to his brother (petitioner herein), four sisters and one nephew.

Petitioner, as plaintiff, claimed ownership of the bonds as the registered P.O.D. beneficiary. Respondent, Pearle W. Yiatchos, named as defendant individually as deceased's widow and as executrix of his will, prayed for a one-half interest in the bonds as her community share, and asked that the remaining one-half interest be distributed to the legatees named in decedent's will. The respondent, Consul General of Greece, as attorney in fact for several legatees under decedent's will, intervened, praying that one-half the bonds be distributed to the widow, and that the remaining one-half be distributed to the legatees under the will.

The facts being stipulated, the case was heard in the trial court solely on arguments on the legal questions raised. Giving full recognition to the Treasury Regulations would result in the award of the bonds in their entirety to petitioner, the named beneficiary. If such result were held to constitute a constructive fraud upon the wife, a constructive trust might be imposed upon one-half the bonds to preserve to her, her community one-half interest in the bonds, with the remaining one-half interest going to the designated beneficiary. (There has been no contention made that there was actual fraud.) If the designation of a beneficiary were held to be totally void, the widow would own one-half the bonds as her interest in community property, and the remaining one-half interest in the bonds would be distributed to the legatees under the will.

The trial court adopted the last of these three theories holding in its memorandum opinion that:

"The bonds are community property in their entirety. The brother, who is named as beneficiary on the bonds, has no right to the bonds or to the proceeds thereof by reason of his having been named as beneficiary on the bonds." (R. 14.)

The court ordered a one-half interest in the bonds distributed to the surviving spouse and the remaining one-half interest to the legatees under the will (R. 15).

Petitioner appealed to the Supreme Court of the State of Washington contending that under the Treasury Regulations and under applicable Washington State statute[1] he, as the named beneficiary, was the sole and absolute owner of the bonds. Petitioner further contended that in the event this might be held to be a constructive fraud on the surviving wife, a constructive trust could be imposed in her favor upon a one-half interest in the bonds, but that in such event, the remaining one-half interest in the bonds should be awarded to him as the designated beneficiary.

After the case had been submitted to the State Supreme Court on briefs and oral argument but before its decision was announced, the Supreme Court of the United States on May 21, 1962, announced its decision in *Free v. Bland*, 369 US 663, 8 L ed 2d 180, 82 S Ct 1089, holding that the survivorship provisions of the

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[1]Chapter 14, Section 2 of Laws of 1943, Revised Code of Washington 11.04.240:

"U. S. Savings Bond—Effect of Beneficiary's Survival of Registered Owner. If the registered owner of United States Savings Bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a Federal Reserve Bank or the Treasury Department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond."

Section 1 of that Act codified in RCW 11.04.230 makes the same provision as to co-owner bonds.

United States Savings Bonds controlled beneficial ownership, and that state law must yield if in conflict.

Notwithstanding this decision, the Supreme Court of the State of Washington affirmed the judgment of the trial court holding that the husband's purchase with community funds of bonds payable on death to his brother was in fraud of the respondent wife, and therefore void *ab initio*. The Court stated that *Free v. Bland* did not conflict (R. 19).

The upshot of the State Court's decision is to award a one-half interest to the bonds to the widow, the other half to the legatees under the will, and nothing to the beneficiary named on the bonds.

ARGUMENT

THE BONDS SHOULD BE HONORED ACCORDING TO THEIR TERMS IN THEIR ENTIRETY.

Petitioner, Gust Yiatchos, is the only named beneficiary on all the United States Savings Bonds involved in this action. The Treasury Regulations unequivocally provide that, "upon proof of death of the owner the beneficiary will be recognized as the sole and absolute owner, . . ." 31 CFR § 315.66 (Appendix p. 19).

The essence of the decision of the Supreme Court of Washington is found in the following statement from the Court's opinion:

> "The husband's purchase with community funds of bonds payable to him alone or, after his death, payable exclusively to his brother, was in fraud of the rights of the respondent wife, Pearle W. Yiatchos. This was a unilateral attempt to convert community property into separate property, and void *ab initio*." (R. 19).

The Court decided that the widow had a vested one-half interest in the bond proceeds and the remaining

one-half interest must be distributed according to the deceased husband's will (R. 20). No effect is given to the designation of the beneficiary on the bonds.

Although the State Court in holding the purchase of bonds void did not speak of constructive trust, it affirmed the judgment of the trial court which had imposed a trust on the bonds for the benefit of the widow and the legatees under the will (R. 15).

Petitioner believes that the decision of the Supreme Court of Washington is contrary to recognized principles of law and serves no desirable purpose of equity or justice. It is diametrically opposed to the Treasury Regulations adopted pursuant to the United States Constitution. Finally, and most significantly, it is contrary to the decision of the United State Supreme Court in *Free v. Bland*, 369 US 663, 8 L ed 2d 180, 82 S Ct 1089, which should have laid to rest any possible doubt there might have been on the question.

The contribution of the Washington Supreme Court in this field of law was early and unfortunate. In *Decker v. Fowler*, 199 Wash 549, 92 P 2d 254, 131 ALR 961 (1939), it was decided that the purpose of the federal regulations was simply to provide a convenient method of payment and they were to be given no effect in a determination of the beneficial ownership of the bonds or their proceeds. The basis of the Court's decision was that the designation of a beneficiary constituted an attempted gift of the bonds which must fail unless all the requisites of a gift, including delivery, were present. The great majority of courts declined to follow this lead and the decision was much criticized.[2]

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[2]Annotation "Rights upon death of co-owners of United States savings bonds," 37 ALR 2d 1221. Comment, "Donee beneficiary—*Decker v. Fowler*," 14 Wash L Rev 312.

The Washington legislature attempted to overcome the *Decker v. Fowler* decision by the enactment of Chapter 14, Section 2 of Laws of 1943 (RCW 11.04.240), which provided:

> "If the registered owner of United States Savings Bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a Federal Reserve Bank or the Treasury Department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond."

The effect of this legislation does not appear to have been directly presented to the Washington Supreme Court for more than fifteen years. During the interim, a great body of decisional law developed throughout the remainder of the country, the great majority of which was contrary to *Decker v. Fowler*.[3] It was generally accepted that Washington had repudiated that decision by statute. Typical is the comment in *Lee v. Anderson*, 70 Ariz 208, 218 P 2d 732 (1950), where the Court said with reference to *Decker v. Fowler*:

> "Since that decision was rendered, the legislature of Washington has passed legislation designed to harmonize future decisions of that Court on this question with the overwhelming majority rule."

The next decision of the Washington Supreme Court on the subject was *In re Allen's Estate*, 54 Wn 2d 616, 343 P 2d 867 (1959), which differed somewhat on the facts from the instant case.[4] There the beneficiary wife

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[3] Annotation "Rights upon death of co-owners of United States savings bonds, 57 ALR 2d 1221.

[4] The *Allen* case appears indistinguishable on its facts from *Free v. Bland*, and the decision is contrary to that later announced in *Free v. Bland*.

died and the surviving husband claimed the sole ownership of the bonds as registered owner. The Court held that the bonds were the property of the marital community. The Court probably foreshadowed the result in the instant case with its statement:

> "We therefore hold that, irrespective of the treasury regulations, a member of the community cannot be deprived of community funds by the purchase of government bonds."

It was in this background that the present case was presented to the Washington Supreme Court.[1] After the case had been argued, but before the decision was filed, the United States Supreme Court announced its decision in *Free v. Bland*, 369 US 663, 8 L ed 2d 180, 82 S Ct 1089, in which the holding was stated as follows:

> "We hold, therefore, that the state law which prohibits a married couple from taking advantage of the survivorship provisions of United States Savings Bonds merely because the purchase price is paid out of community property must fall under the Supremacy Clause."

Notwithstanding that decision (and without having allowed opportunity for argument pursuant to it), the Washington Supreme Court held that the purchase of such bonds by a married person with community funds was void as an attempt to divest the wife of her interest in community property.

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[1] The decision in *In re Allen's Estate*, 54 Wn 2d 616, 343 P 2d 867, had aroused speculation as to the proper decision to be reached under the facts of the present case. The writer of a comment in 35 Wash L Rev 280 (1960) expressed the opinion that the spouse should be entitled to the imposition of a constructive trust in her favor upon a one-half interest in the bonds with the remaining one-half going to the designated beneficiary.

The approach taken by the Court, that its decision was necessary in order to prevent a designing husband from converting community property into separate property and thereby divesting the wife of any interest in her own property, is unrealistic and unreasonable. There is nothing inherent in the acquisition of such bonds which needs to be considered as rendering them unavailable for the support and benefit of the community, nor unavailable for division in a divorce action, nor beyond the reach of creditors of the community.

Each member of the community has the right to dispose of his one-half of the community property under Washington law in any event.* The result of the decision is to deny to a married person the right to accomplish by the purchase of United States Savings Bonds that which he could have accomplished by a will.

The State Court holding makes it impossible for a married person in the State of Washington to transmit his property on death by means of United States Sav-

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*RCW 11.04.050 *Descent and distribution of community property.* Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposition shall have been made by the deceased husband or wife of his or her half of the community property, it shall descend equally to the legitimate issue of his, her or their bodies. If there be no issue of said deceased living or none of their representatives living, then the said community property shall all pass to the survivors, to the exclusion of collateral heirs, subject to the community debts, the family allowance and the charges and expenses of administration.

RCW 26.16.030 *Community property defined—Control of personalty.* Property not acquired or owned as prescribed in RCW 26.16.010 and 26.16.020 acquired after marriage by either husband or wife or both, is community property. The husband shall have the management and control of community personal property, with a like power of disposition as he has of his separate personal property, except he shall not devise by will more than one-half thereof.

ings Bonds, an instrument which is available to anyone else in any other part of the United States. Worse than that, it constitutes a trap for the unwary, for who but the most learned in the law would suspect that the naming of a beneficiary upon an obligation of the United States Government would be an utterly meaningless gesture.

If a United States Savings Bond is not to be paid to any extent according to the terms appearing upon its face, its integrity is certainly suspect and its attractiveness to investors greatly damaged.

The avoidance of these evils was the basis of the decision in *Free v. Bland*, 369 US 663, 8 L ed 2d 180, 82 S Ct 1089, which petitioner believes is clearly decisive of the present case aside from the merits of petitioner's cause which should sustain his contention here independently of precedent. As there stated:

> "If the State can frustrate the parties' attempt to use the bonds' survivorship provision through the simple expedient of requiring the survivor to reimburse the estate of the deceased co-owner as a matter of law, the State has interfered directly with the legitimate exercise of the power of the Federal Government to borrow money."

Petitioner believes that the State Court's decision is irreconcilable with *Free v. Bland* and that its effort to distinguish that case can only kindly be described as feeble at best. In effect, the State Court held the survivorship provisions of United States Savings Bonds to be void because of conflict with state property law. The writer of a note on the *Yiatchos* case comments on that opinion thusly:

> "In other words, the court adhered to the 'convenience theory' and denied the supremacy of the

federal regulations, notwithstanding the Supreme Court's contrary pronouncement. But, if this was unusual, the rest of the opinion would seem extraordinary."[7]

As the author then points out, the State Court completely omitted reference to the statement in *Free v. Bland* that,

> "... the doctrine of fraud applicable *under federal law* ... must be determined on another day..."
> (Emphasis supplied.)

Citing *Holmberg v. Armbrecht*, 327 US 392, 90 L ed 743, 66 S Ct 582, 162 ALR 719; *Clearfield Trust Co. v. United States*, 318 US 363, 87 L ed 838, 63 S Ct 573.

In spite of this direction, the State Court applied purely state law in complete derogation of the federal regulations and emasculation of *Free v. Bland*.

In line with the principle of *Clearfield Trust Co. v. United States*, the instant case presents a situation where a uniform rule throughout the United States is singularly desirable and conversely a hodge-podge of various state rules would be most unsatisfactory.[8] United States Savings Bonds are marketed to the great mass of individuals throughout the country, among whom the sophisticated and technically informed investor is the exception rather than the rule. With the increasingly migratory nature of our population, the

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[7] 35 Wash L Rev No. 2, p. 255.

[8] The rules applied by the various states are so widely varied, both as between community property and non-community property states and within each category, that an attempt to capitulate them here would be a practicable impossibility and would serve very little purpose. An extensive review of the subject is contained in an annotation in 49 ALR 2d 521, "Gift or other voluntary transfer by husband as fraud on wife."

confidence necessary to the ready marketability of these bonds requires that they be given consistent effect throughout all of the states.

The provisions of the bonds and the Treasury Regulations governing them should be deviated from only in the most compelling circumstances.

In upholding the supremacy of the Federal law and regulations and the integrity of the bonds, the bonds should be paid according to their terms in the absence of a showing of actual fraud or fraudulent intent or the transfer of such a disproportionate share of the estate as to be tantamount thereto. The burden should be upon the party attacking the survivorship provisions of the bonds to allege and prove such circumstances.

In the instant case, there is no contention made that there was actual fraud practiced by the deceased in the purchase of the bonds, no hint of fraudulent intent or improper design to deprive the spouse of her property. The total face value of the bonds is $15,075.00, and the total appraised value of the community estate, including the bonds, is $36,505.00, and the bonds are not required for payment of claims against the estate (R. 5). The only impropriety present is that which might be imputed by the court as a matter of law. Since the deceased husband had the right to dispose of one-half of the community property,[1] petitioner contends that there is here no fraud on the wife and consequently no justification for imposing a constructive trust at all.

No improper design on the part of the husband or disproportionate transfer of community property is

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[1]RCW 11.04.050 and RCW 26.16.030 Set forth in footnote 6 herein.

present in the instant case. The bonds should be honored according to their terms and awarded to petitioner in their entirety.

EVEN IF A CONSTRUCTIVE TRUST BE IMPOSED IN FAVOR OF THE SURVIVING SPOUSE AS TO A ONE-HALF INTEREST IN THE BONDS, THE BENEFICIARY DESIGNATION SHOULD BE HONORED AS TO THE REMAINING ONE-HALF INTEREST.

In *Free v. Bland* this Court indicated that relief under Federal law would be available where the circumstances "manifest fraud or a breach of trust tantamount thereto on the part of a husband while acting in his capacity as manager of the general community property."

The State Court in the instant case held that any purchase by a spouse of United States Savings Bonds with community property, designating someone other than the marital partner as beneficiary, would constitute such fraud or breach of trust *as a matter of law* in the absence of affirmative proof of consent thereto by the non-purchasing spouse. Even if such holding by the State Court be accepted by this court, there remains the question of the nature and extent of the relief to be provided.

While the purpose of the State Court, namely, the protection of the rights of the spouse, might be laudable, the remedy it applied went far beyond the purported wrong it sought to rectify. It was completely unnecessary to such purpose to hold the designation of the beneficiary to be totally void. The same protection could have been afforded by the imposition of a constructive trust in her favor upon an undivided one-half interest in the bonds.

It seems scarcely arguable that any relief to be provided should be designed to correct the wrong found and that it should be limited by that purpose. The wrong asserted here is the deprivation of the widow of her interest in community property. This interest is in no event more than one-half of the property and, in fact, in the instant case under decedent's will, the remaining one-half interest is devised to collateral heirs (R. 5). It is pointless to hold the designation of the beneficiary completely void for this remedies no evil. It amounts to nothing less than punishment of the deceased spouse for having attempted to utilize the survivorship provisions of United States Savings Bonds.

The courts of other states have found the extremes of the Washington Supreme Court unnecessary and the remedy here suggested by petitioner to be adequate. Except for the fact that it was not in a community property state, the New Hampshire case of *Ibey v. Ibey*, 43 A 2d 157 (NH 1945) is indistinguishable on the facts from the present case. The Court there said:

> "If fraud as herein defined is found, it does not follow that the bonds, valid in themselves, belong to the estate. The widow is entitled to what she has lost, but otherwise the bonds are payable in accordance with their terms."[*]

Petitioner urges that if the Treasury Regulations are to be regarded as the supreme law of the land, they must be given effect at least up to the point when to do

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[*] *Katz v. Driscoll*, 194 P 2d 822 (Cal 1948), limits recovery in similar fashion. In *Succession of Geagan*, 33 So 2d 118 (La 1947), the wife was awarded judgment against her deceased husband's son named on the bonds for one-half the value thereof. See also Annotation: "Imposition or Declaration of Constructive or Resulting Trust in United States savings bonds, 51 ALR 2d 163."

so would be to permit United States Savings Bonds to be an implement of fraud outrageous to justice or would deprive a person of his vested property interests. To enforce the beneficiary designation in the instant case as against the collateral legatees runs afoul of no such transcendent consideration. The collateral legatees have no such vested property rights and cannot claim fraud of any kind constructive or otherwise.

If awarding the bonds in their entirety to petitioner as the designated beneficiary be deemed to work a constructive fraud upon the widow, her interest can be protected by the imposition of a constructive trust in her favor upon an undivided one-half interest in the bonds. The remaining one-half interest should be held to be the property of the designated beneficiary.

CONCLUSION

The decision of the Supreme Court of Washington holding the designation of beneficiary upon United States Savings Bonds purchased with community funds to be void, should be reversed.

The bonds should be awarded to petitioner as the designated beneficiary in their entirety or at the very least as to the one-half interest remaining after a one-half interest has been preserved to the surviving spouse by the imposition of a constructive trust.

Respectfully submitted,

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Appendix A
31 U.S.C. § 757c (a)

"The Secretary of the Treasury, with the approval of the President, is authorized to issue from time to time, through the Postal Service or otherwise, United States savings bonds and the United States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by Section 757b of this title, and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b) - (d) of this section, and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe."

Appendix B
31 C.F.R. 315.0, et seq. (315.5, 315.7, 315.20, 315.66)

"§ 315.0 *Applicability of regulations.* The regulations in this part apply generally to all United States Savings Bonds of all series of whatever designation, bearing any issue dates whatever, except as otherwise specifically provided herein."

"§ 315.5 *General.* United States Savings Bonds are issued only in registered form. The form of registration used must express the actual ownership of and interest in the bond and, except as otherwise specifically provided in Subpart E and § 315.48 of Subpart I of this part, will be considered as conclusive of such ownership and interest.***"

"§ 315.7 *Authorized forms of registration.* Subject to any limitations or restrictions contained in these regulations on the right of any person to be named as owner, coowner, or beneficiary, savings bonds may be registered in the followni forms:

(a) *Natural persons. . . .*

(3) Beneficiary form—two persons (only).

Examples:

'John A. Jones payable on death to Mrs. Ella S. Jones.'

'John A. Jones P.O.D. Mrs. Ella S. Jones.'

'Payable on death' may be abbreviated to 'P.O.D.' as indicated in the last example. The first named person is hereinafter referred to as the owner and the second named person as the beneficiary."

"§ 315.20 *General.* (a) No judicial determination will be recognized which would give effect to an at-

tempted voluntary transfer inter vivos of a bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner or beneficiary, and all other provisions of this subpart are subject to this restriction. Otherwise, a claim against an owner or coowner of a savings bond and conflicting claims as to ownership of, or interest in, such bond as between coowners or between the registered owner and beneficiary will be recognized, when established by valid judicial proceedings, upon presentation and surrender of the bond, but only as specifically provided in this subpart."

"§ 315.66. *After the death of the registered owner.* If the registered owner dies without the bond having been presented and surrendered for payment or authorized reissue and is survived by the beneficiary, upon proof of death of the owner the beneficiary will be recognized as the sole and absolute owner, and payment or reissue will be made as though the bond were registered in his name alone (see Subpart K)." (Subpart K immaterial.)